

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 32 OF 2021

JOSEPH ZACHARIA APPLICANT

VERSUS

YOHANA ALBERT KINYEMBA..... RESPONDENT

RULING

Date of last order: 11/08/2021

Date of Ruling: 31/08/2021

T. N. MWENEGOHA, J:

The application beforehand is for extension of time and is lodged under the provisions of Section 11(1) of the Appellate Jurisdiction Act, cap 141 R.E 2019 and section 95 of the Civil Procedure Code cap 33 R.E 2019 praying for extension of time for the applicant to apply for leave to appeal to the Court of Appeal of Tanzania against judgment and decree of this court in Land Appeal No. 21 of 2019.

The Chamber Application is accompanied by the Affidavit of the applicant dated 11th day of January, 2021. By an order of the Court dated 26/05/2021, the matter was disposed of by way of written submission. The applicant was unrepresented while Advocate Ignas Seti Punge represented the respondent.

In his submissions to support the application, the applicant submitted that main reason for delay is that he unsuccessfully consulted his lawyer during holiday season hence delayed for 11 days. He submitted that the 30 days period to file application for leave had fallen during the holiday seasons; that is why it was only until when the holiday was over, that he was able to consult a lawyer for preparation to lodge this application. He submitted that he served the respondent with the notice to appeal on time and therefore respondent was aware of his intention. He then cited different authorities to stress his point including the case of **FINCA (T) Limited and Kipondogoro Auction Mart V. Boniface Mwalukisa, Civil Application No. 589/12 of 2018 CAT.**

In reply Mr. Punge opposed the Application submitting that the reason for delay that the applicant was looking for a lawyer to him is insufficient and implausible because all along the applicant was represented by CSB Law Chambers which is located at Morogoro, and that the applicant filed notice of appeal which was filed by Silanda Advocate. The counsel asked himself what kind of advocate the applicant was looking for. He then cited the case of **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women Christians Association of Tanzania, Civil Appeal No. 2 of 2010 (Unreported)** which establish key conditions for grant of enlargement of time, that the applicant has not met.

He also challenged the ground of illegality raised as a new ground since it was not pleaded in the supporting affidavit. He submitted that submission on illegality amount to a new fact which was not pleaded.

Having gone through the records and submissions of both parties, the issue for determination is whether this application has merits.

In the case of **Lyamuya Construction Company Ltd (supra)** the court establish criteria for granting application like the one at hand, that are,

- a. The applicant must account for all period of delay.*
- b. The delay should not be inordinate.*
- c. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.*
- d. If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged.*

I have gone through the reasons adduced by the applicant for the time of delay which is 11 days. The applicant was supposed to file application for leave within 30 days from 2nd December, 2020 to 2nd January, 2021. His argument is that during that time it was holiday and that it was difficult to get a proper lawyer. To Mr. Punge this is insufficient ground.

I have noted Mr. Punge challenging the change of Advocate by the applicant from CSB Law chambers to Silanda Advocate (to possibly another advocate). I do not see any problem for the applicant to change Advocates. If the CSB Law chambers represented the applicant all along its fine but this is a new case so it requires new instruction. Advocates are hired by their clients and the clients have the power of instruction to any Advocate as they wish. As noted above, this is a new application and it is now indicated in the

application and submission that the applicant is unrepresented. Therefore Mr. Punge's argument is baseless.

From the authority cited and arguments above I see those 11 days that the applicant delayed are reasonable taking into account that even the Court was on leave although cases were admitted. It is understandable if counsel was to be on leave too. Moreover, there is undisputed fact that the applicant has already shown his intention to appeal within time by filing notice of appeal.

I have also noted that applicant has raised the issue of illegality in his submission; on this point I join hands with Mr. Punge that the preliminary objection cannot be introduced in the written submission.

Having said that I hereby find the application to have merits and that the time is extended for the applicant to lodge his intended application for leave to appeal to the Court of Appeal which shall be lodged in this Court within fourteen (14) days. The extended period shall commence after obtaining certified copies of this ruling. No order as to costs.

Dated Dar es Salaam this **18th** day of **August, 2021**




T.N. Mwenegoha
Judge

Extracted **Issued** **2021**